



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

June 18, 2008

Mr. David D. McGavock dba
Small Waters Lake Management
1841 New Lake Road
Lewisburg, Tennessee 37922

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4759

Subject: DIRECTOR'S ORDER NO. WPC08-0103
MADISON AT RIDGELAKE APARTMENTS
DAVIDSON COUNTY, TENNESSEE

Dear Mr. McGavock:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

**DAVID D. MCGAVOCK dba
SMALL WATERS LAKE MANAGEMENT**

RESPONDENT

)
)
)
) **DIVISION OF WATER**
) **POLLUTION CONTROL**
)
)
) **CASE NUMBER WPC08-0103**
)

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

David D. McGavock dba Small Waters Lake Management (hereinafter the "Respondent") was contracted by Madison at Ridgelake Apartment Community in Davidson County (hereinafter the "site") to conduct algaecide treatment to an impounded reach of Overall Creek at the site. Service of process may be made on the Respondent at 1841 New Lake Road, Lewisburg, Tennessee 37922.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

Overall Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VI.

On May 9, 2007, division personnel from the Nashville Environmental Field Office (NEFO) conducted a complaint investigation and noted a blue-green discoloration to Sugartree Creek in Davidson County. Upon further investigation, division personnel noted that Burton Hills Lake, an impounded reach of Sugartree Creek, had been treated with a blue-green chemical substance causing a distinct color contrast for approximately 3,500 feet downstream, staining stones in the creek bed at several locations. On May 18, 2007, the division issued a Notice of Violation (NOV) informing the Respondent that treating the lake with a blue-green chemical substance is prohibited by the *Tennessee Water Quality Control Act*.

VII.

On March 29, 2008, division personnel conducted a complaint investigation at the site and noted a blue-green discoloration to Overall Creek. Upon further investigation, division personnel noted that an impounded reach to Overall Creek had been treated with a blue-green chemical substance causing a distinct color contrast for approximately 1.75 miles downstream, resulting in a condition of pollution.

VIII.

On April 15, 2008, the division issued a NOV to the Respondent for the violations noted during the March 29, 2008, complaint investigation. The division requested that the Respondent submit, within 15 days of receipt of the NOV, a written description of the nature and amount of the chemical used and the frequency of past discharges to the impounded reach to Overall Creek. The Respondent was informed that treating waters of the state with a blue-green chemical substance is prohibited by the *Tennessee Water Quality Control Act*.

IX.

On April 28, 2008, the Respondent submitted correspondence to the division stating that Crystal Blue Shade® is the algaecide that had been used at the site and that its usage would be discontinued per the Madison at Ridgeland manager's request.

X.

During the course of this investigation, the division incurred damages in the amount of ONE HUNDRED SEVENTY FIVE DOLLARS AND SEVENTY FOUR CENTS (\$175.74).

VIOLATIONS

XI.

By causing a condition of pollution to Overall Creek, as described herein, the Respondent has violated T.C.A. §69-3-114(a):

T.C.A. §69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall not make any further unpermitted chemical applications to waters of the state.

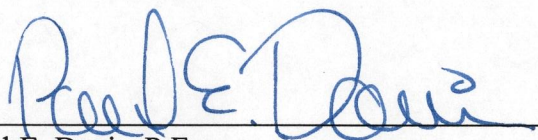
2. The Respondent shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS (\$2,500.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of FIVE HUNDRED DOLLARS (\$500.00).
 - b. If the Respondent fails to comply with Part XII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
3. The Respondent shall pay damages in the amount of ONE HUNDRED SEVENTY FIVE DOLLARS AND SEVENTY FOUR CENTS (\$175.74) within 30 days of receipt of this Order and Assessment.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 18th day of June 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing, the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.